



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

APR 16 2007

Benjamin L. Ginsberg, Esq.
Eric S. Brown, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037

RE: MUR 5789
Martinez for Senate and Nancy H. Watkins,
in her official capacity as treasurer

Dear Messrs. Ginsberg and Brown:

On August 14 and October 25, 2006, the Federal Election Commission notified your client, Martinez for Senate and Nancy H. Watkins, in her official capacity as treasurer ("Martinez Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On April 3, 2007, the Commission found, on the basis of the information in the complaint, your response, and other information, that there is no reason to believe that the Martinez Committee violated 2 U.S.C. § 441b by knowingly accepting prohibited contributions. The Commission also voted to dismiss the allegation that the Martinez Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.7(b) by failing to provide employer information for certain contributors. Nevertheless, based on the facts and circumstances of the matter, the Commission admonishes the Martinez Committee to ensure that it exercises best efforts to obtain and disclose contributor information.

The file in this matter is now closed. Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Julie McConnell, the attorney assigned to this matter, at (202) 694-1650.

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Eric S. Brown, Esq.
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Sincerely,

Thomasenia P. Duncan
Acting General Counsel



BY: Rhonda J. Vosdinger
Associate General Counsel for Enforcement

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

MUR 5789

Respondents: Martinez for Senate and Nancy H. Watkins, in her official capacity as treasurer

I. INTRODUCTION

The complaint alleges that Martinez for Senate violated the Federal Election Campaign Act of 1971, as amended ("the Act"), in connection with fundraisers held by Bacardi USA, Inc. ("Bacardi"). Specifically, the complaint alleges that Bacardi facilitated the making of contributions by failing to obtain pre-payment from Bacardi USA, Inc. PAC ("Bacardi PAC") for \$473.28 in catering expenses incurred during the Martinez fundraiser and by using a list of corporate vendors to distribute invitations to the Martinez fundraiser and that, as a result, Martinez for Senate knowingly accepted prohibited corporate contributions. *See* 2 U.S.C. § 441b. For the reasons discussed below, the Commission finds no reason to believe that Martinez for Senate and Nancy H. Watkins, in her official capacity as treasurer, violated the Act by knowingly accepting prohibited corporate contributions.

In addition, the complaint alleges that Martinez for Senate failed to use best efforts to obtain and disclose employer information for contributors who made contributions on May 11, 2004, the date of the Bacardi PAC fundraiser. *See* 2 U.S.C. §§ 431(13)(A), 434(b)(3)(A); 11 C.F.R. §§ 100.12, 104.3(a), 104.7(b). Because Martinez for Senate materially amended its 2004 disclosure reports to provide missing contributor information, the Commission dismisses the allegation that Martinez for Senate and Nancy H. Watkins, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.7(b) and issues an admonishment.

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II. FACTUAL AND LEGAL ANALYSIS

A. ALLEGED KNOWING ACCEPTANCE OF CORPORATE CONTRIBUTIONS

On May 11, 2004, Bacardi PAC held a fundraising event for Martinez for Senate, the authorized committee of Mel Martinez, a U.S. Senate candidate in Florida in 2004, at Bacardi's corporate headquarters in Miami, Florida. *See* Compl. at ¶ 5; Bacardi Resp. at 2. As the result of this fundraiser, the complaint alleges that Bacardi impermissibly facilitated the making of contributions by (1) failing to obtain pre-payment from Bacardi PAC for \$473.28 in food and liquor provided by in-house catering staff, instead receiving reimbursement for these expenses on June 16, 2004; and (2) using a corporate list of vendors, including a law firm and two public relations firms, to distribute invitations to the Martinez fundraiser, resulting in at least \$7,450 in facilitated contributions to Martinez for Senate from employees of those vendors. *See* Amended Compl. at ¶ 8 and Exh. 5.

According to Bacardi, Bacardi PAC held the Martinez fundraiser in a meeting room that the company regularly makes available at no charge to civic, educational and other organizations and served limited refreshments, including distilled spirits, beverages, and hors d'oeuvres provided by Bacardi's in-house catering services. *See* Bacardi Resp. at 2-3. Bacardi asserts that two employees who volunteered their time to the Martinez campaign planned the fundraiser and extended no more than 25 invitations to personal and business contacts, some of whom may have forwarded the invitation to their own friends, colleagues, and contacts. *See id.* at 2; *see also* Affidavit of Frederick J. Wilson III ("Wilson Aff.") at ¶ 5. As a result of the fundraiser, Martinez collected a total of \$23,000 in contributions ranging in amount from \$50 to \$2,000. *See* Bacardi Resp. at 2.

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1 Corporations are prohibited from using corporate resources or facilities to engage in
2 fundraising activities in connection with any federal election beyond certain limited exemptions
3 set forth in the Commission's regulations. *See* 2 U.S.C. § 441b; 11 C.F.R. § 114.2(f). For
4 example, a corporation may not provide catering or other food services in connection with
5 fundraising activities or use a corporate list of customers, clients, vendors or others outside the
6 restricted class to solicit contributions or distribute invitations to a fundraiser, unless it obtains
7 advance payment for the fair market value of the services or list. *See* 11 C.F.R.
8 § 114.2(f)(2)(i)(C), (E). By contrast, a corporation's separate segregated fund may make
9 contributions and expenditures in connection with federal elections subject to the Act's limits
10 and disclosure requirements. *See* AO 1997-16 (ONRC Action) at 6. In addition, stockholders
11 and employees of a corporation may make occasional, isolated or incidental use of corporate
12 facilities for individual volunteer activity in connection with federal elections and are not
13 required to reimburse the corporation unless their activities increase overhead or operating costs.
14 *See* 11 C.F.R. § 114.9(a).

15 Bacardi asserts that Bacardi PAC underwrote all of the expenses associated with the
16 Martinez fundraiser. Bacardi admits, however, that it failed to obtain pre-payment from Bacardi
17 PAC for catering expenses totaling \$473.28 for in-house inventory and catering staff.
18 Attributing this error to a "misunderstanding," Bacardi states that Bacardi PAC reimbursed it for
19 the expenses on June 16, 2004, reported the amount as an in-kind contribution to Martinez for
20 Senate, and disclosed what happened in an e-text attachment to its 2004 July Quarterly Report.
21 *See* Bacardi Resp. at 2; *see also* Compl. at Exh. 1. Bacardi also asserts that, since this error, it
22 and its PAC have taken steps to ensure future compliance, including consulting with outside
23 counsel prior to engaging in fundraising events.

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1 Bacardi denies that it used a list of corporate vendors for the Martinez fundraising event.
2 In an affidavit, Frederick J. Wilson III, the Senior Vice President and General Counsel, states
3 that the company does not maintain a list of corporate vendors and, as discussed above, that two
4 employees acting as volunteers organized the fundraising events and invited personal and
5 business contacts to the fundraiser. *See* Wilson Aff. at ¶¶ 5-6. Although the response does not
6 identify the volunteers, include affidavits from them, or provide additional information
7 concerning the scope of their fundraising activities, it appears sufficient to refute the allegations
8 that Bacardi facilitated contributions by using a list of corporate vendors for the fundraiser
9 because the complaint was conclusory and offered no information supporting this speculative
10 allegation.⁴

11 Accordingly, the Commission finds no reason to believe that Martinez for Senate and
12 Nancy H. Watkins, in her official capacity as treasurer, violated 2 U.S.C. § 441b by knowingly
13 accepting prohibited contributions in connection with this fundraiser.

14 **B. ALLEGED FAILURE TO ADEQUATELY REPORT EMPLOYER**
15 **INFORMATION**

16 The complaint also alleges that Martinez for Senate failed to use best efforts to obtain and
17 disclose employer information for contributors. Specifically, the complaint asserts that Martinez
18 for Senate, in its 2004 July Quarterly Report, used the acronym “BUSA” rather than “Bacardi
19 U.S.A., Inc.” to identify four Bacardi employees and failed to disclose any employer information
20 for 27 of the 53 contributors—54%—who made contributions on May 11, 2004, as part of a
21 deliberate attempt to conceal Bacardi’s role in the Martinez fundraising event. *See* Amended

⁴ In addition, because the complaint does not allege that Bacardi expected, ordered, or coerced its employees to plan the fundraiser, and the available information does not suggest that this was the case, there is no reasonable basis to investigate whether Bacardi engaged in corporate facilitation in this manner or through other means. *See* 11 C.F.R. §§ 114.2(f), 114.9(a).

1 Compl. at ¶¶ 9-10, 19 and Exh. 5. Bacardi asserts that “BUSA” is a common acronym and is
2 used on a regular basis throughout the company. *See* Bacardi Resp. at 4.

3 Martinez for Senate recently amended its 2004 July Quarterly Report to provide
4 employer information for all but four of the 53 contributors who made contributions on May 11,
5 2004, and corrected the employer information for the contributors it listed as “BUSA”
6 employees, identifying them as executives of Bacardi U.S.A. or Bacardi Global Brands. Because
7 Martinez for Senate materially amended its 2004 July Quarterly Report, the Commission
8 dismisses the allegation that Martinez for Senate and Nancy H. Watkins, in her official capacity
9 as treasurer, violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.7(b) and issues an
10 admonishment.